

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2186 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIJAN DALPAT RAJABHAI DHARIYA

Versus

DISTRICT MAGISTRATE

Appearance:

MR VIJAY H PATEL for Petitioner

MR UR BHATT AGP for Respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 10/07/96

ORAL JUDGEMENT

The petitioner Harijan Dalpat Rajabhai Dharaiya, in this petition under Article 226 of the Consitution of India, has challenged the legality and validity of the order of detention dated 20.2.1996 passed under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the 'PASA Act') by the District Magistrate, Bhavnagar (hereinafter referred to as the 'detaining authority').

In the grounds of detention supplied to the

detenu, the detaining authority has relied on 8 pending trial cases registered against the detenu under the provisions of Bombay Prohibition Act and the statements of four witnesses, who have alleged about the anti social and nefarious activities of the detenu, whose identity are not disclosed to the detenu by invoking the provisions of section 9(2) of the PASA Act. Considering this material against the detenu, the detaining authority has recorded a finding that the detenu is a bootlegger within the meaning of section 2(b) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenged in the present petition.

This petition is capable of being disposed of on the first contention advanced by Mr. Patel and, therefore, it is not necessary to deal with other contentions raised in the petition. Mr. Patel submits that the detaining authority has not supplied the bail order passed by the competent court in respect of the offence registered by the 'A' Division Police Station, Bhavnagar, in CR No. II-165/94, and this being a vital material kept away the detenu. The detenu has been denied an opportunity of making an effective representation guaranteed under Article 22(5) of the Consitution of India. Having seen the original file of the documents supplied alongwith the grounds of detention, I find that even though the bail application with respect to the said offence is supplied but the order passed by the learned Magistrate on the back side of the application does not figure in the copies of the documents supplied to the detenu, however, that is not the case that the original file maintained by the respondents where I in fact, find the order of bail on the back side of the application. Mr. UR Bhatt, learned AGP appearing for the respondents does not dispute this fact. Under the circumstances, the petition is required to be allowed by holding that non-supply of the bail order which is a vital material to the detenu has resulted into denial of making an effective representation guaranteed under Article 22(5) of the Consitution of India, and, therefore, continuous detention is vitiated.

In the result, this petition is allowed. The impugned order of detention dated 20.2.1996 is quashed and set aside. The detenu Harijan Dalpat Rajabhai Dharaiya is directed to be set at liberty forthwith, if his detention is not required for any other purpose. Rule

is made absolute accordingly with no order as to costs.
